

(UNREDACTED)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. 13-20067
)	
ROBERT DREW,)	
)	
Defendant.)	

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JOHN T. FOWLKES, JR., JUDGE
WEDNESDAY MORNING
APRIL 23, 2014

LYNN DUDLEY
OFFICIAL REPORTER
923-A FEDERAL BUILDING
MEMPHIS, TENNESSEE 38103

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WEDNESDAY MORNING**APRIL 23, 2014**

The trial of this case resumed on this date, Tuesday, April 23, 2014, at 9:30 o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

THE COURT: We will be in recess.

The parties can go ahead and get together as far as the trial is concerned and get started.

Okay. Why don't you bring him in, I will step off and I will be right back.

(Recess at 9:59 a.m.)

THE COURT: I don't -- I did see Mr. Biggers and Mr. Stringfellow.

COURT SECURITY OFFICER: They're in the witness room.

THE COURT: Okay, we're ready.

Ms. Robinson, you have the situation at 5:30?

MS. JERMANN-ROBINSON: No, I'm good. I should have had it covered yesterday. My husband, he was in a court and I was in court.

1 **MR. BIGGERS:** Good morning, Your Honor.

2 **THE COURT:** Good morning.

3 I just remember those days.

4 **MS. JERMANN-ROBINSON:** He was at the track
5 so he could have run home.

6 **THE COURT:** How old is he.

7 **MS. JERMANN-ROBINSON:** Fourteen, it's a
8 little far.

9 **THE COURT:** Okay. Both sides ready?

10 **MS. JERMANN-ROBINSON:** Yes, Your Honor.

11 **MR. BIGGERS:** The government is ready.
12 Can I have one moment, Your Honor?

13 **THE COURT:** All right.

14 **MR. BIGGERS:** Apologize, Your Honor.

15 **THE COURT:** Let's come back on the record.
16 Anything I need to take up with either
17 side before I bring in the jury?

18 **MR. BIGGERS:** Nothing from the government.

19 **MS. JERMANN-ROBINSON:** No, Your Honor,
20 thank you.

21 **THE COURT:** All right. Let's bring in the
22 jury.

23 (Jury present at 10:03 a.m.)

24 **THE COURT:** All right. Good morning,
25 folks.

1 **A JUROR:** Good morning.

2 **THE COURT:** Hope you had a good evening
3 last night.

4 I had a couple of things I had to take
5 care of this morning. Those are all out of the way
6 so we are ready to proceed at this time. Okay.

7 So we are going to turn to the government,
8 Mr. Biggers and Mr. Stringfellow, if you would,
9 please, call your next witness.

10 **MR. BIGGERS:** The government calls
11 Sergeant Cliff Atkins to the witness stand.

12 **THE COURT:** All right.

13 Come forward if you would, please,
14 Sergeant, on around.

15 Okay. You are good right there.

16 Raise your right hand.

17 Do you solemnly swear or affirm, under the
18 penalties of perjury, the testimony that you are
19 about to provide the court and jury in the case now
20 on trial to be the truth, the whole truth and
21 nothing but the truth, so help you God?

22 **THE WITNESS:** I do.

23 **THE COURT:** Have a seat right here if you
24 would, please.

25 **MR. BIGGERS:** May I proceed, Your Honor?

THE COURT: Go ahead.

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CLIFF ATKINS,

was thereupon called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BIGGERS:

Q. Sergeant Atkins, please state and spell your name for the record.

A. It's Cliff Atkins, C-l-i-f-f, A-t-k-i-n-s.

Q. Sergeant Atkins, where are you currently employed?

A. Oakland Police Department.

Q. How long have you been employed with the Oakland Police Department?

A. Since 2009.

THE COURT: Sergeant, I don't think you need to lean forward --

THE WITNESS: Okay.

THE COURT: -- sit back and relax. And if we can't hear you, then lean the microphone a little closer, but I don't think you need to lean, your voice is strong enough.

THE WITNESS: Okay.

BY MR. BIGGERS:

Q. Have you had any prior law enforcement

1 experience other than the Oakland Police Department?

2 **A.** Yes, sir.

3 **Q.** All right. How long have you worked in law
4 enforcement?

5 **A.** Twenty-two years.

6 **Q.** In your time working with law enforcement,
7 have you been given any award or accommodation?

8 **A.** Yes, sir.

9 **Q.** Describe those for the ladies and gentlemen
10 of the jury, please?

11 **A.** In 2010 I was given a Purple Heart and a life
12 saving award for running into a burning house and
13 pulling out the home owner, okay, he was burned
14 90 percent of his body, third degree burns, I got
15 burned in the process.

16 **Q.** Was that while you were with Oakland?

17 **A.** Yes, sir.

18 **Q.** What position do you currently hold with the
19 Oakland Police Department?

20 **A.** I am a shift sergeant over Charlie shift.

21 **Q.** What time does Charlie shift run?

22 **A.** From two p.m. to midnight.

23 **Q.** Were you in this same position in December of
24 2012?

25 **A.** I was.

1 Q. Specifically on December 7, 2012, did you
2 work on that day?

3 A. I did.

4 Q. What shift did you work on that day?

5 A. Charlie shift that day.

6 Q. Same timeframe?

7 A. Yes, sir, tow -- two p.m. to midnight.

8 Q. Were you working alone on that night?

9 A. No, sir, I was not.

10 Q. Who was with you on that night?

11 A. In my vehicle I had Patrolman Clark and then
12 I had a K-9 officer that was on that shift, also,
13 she was Officer Gonzales, and then Sergeant Maxwell
14 was working.

15 Q. You were the only officers working with the
16 Oakland Police Department on that night?

17 A. No, sir. Officer Farr, Stephen Farr was also
18 working that night.

19 Q. Did you receive a call to respond to an
20 attempted robbery on that evening?

21 A. I did.

22 Q. Approximately what time did that call come
23 out?

24 A. Approximately 10:17 p.m.

25 Q. Where were you when you first heard the call

1 come out?

2 **A.** I was approximately a mile and a half to two
3 miles from the scene of the robbery when it come
4 out.

5 **Q.** You say "the scene of the robbery," are you
6 referring to the Hickory Center Market?

7 **A.** I am.

8 **Q.** What were you doing when the call came out?

9 **A.** I was finishing up a traffic stop.

10 **Q.** When you say "I," were you -- were you on
11 this stop with Officer Clark as well?

12 **A.** Officer Clark and Officer Gonzales, she had
13 backed us up.

14 **Q.** Once your heard the call come out, what did
15 you do?

16 **A.** I give the driver back his -- their
17 information and got back in my vehicle and proceeded
18 directly toward the scene of the robbery.

19 **Q.** When you say "scene of the robbery," Hickory
20 Center Market?

21 **A.** Yes, sir.

22 **Q.** Who got in the vehicle with you?

23 **A.** Officer Clark.

24 **Q.** Did you, in fact, go to the Hickory Center
25 Market?

1 **A.** No, sir. En route to the Hickory Center
2 Market Sergeant Maxwell made the scene, so I
3 proceeded passed it to the Renaissance Professional
4 Park and went up to that parking lot right there.

5 **Q.** Why did you go to that area?

6 **A.** Sergeant Maxwell put out on the radio that
7 the subject had left on foot. So I went up that --
8 to the Renaissance's Park, where Officer Gonzales
9 she proceeded up to the red light at Highway 196.

10 **Q.** Now show you Exhibit 4.

11 You look on the scene --

12 **A.** Yes, sir.

13 **Q.** -- to your right.

14 You recognize what's shown there?

15 **A.** Yes, sir, that's the Hickory Center Market.
16 In the distance you can see the intersection where
17 Officer Gonzales went up to.

18 **Q.** And it's a touch screen, you can actually
19 touch the screen and make a circle to indicate where
20 you are referring to?

21 **A.** I'm referring to that area right there
22 (indicating).

23 **Q.** All right. So is that a traffic light that
24 you circled?

25 **A.** Yes, sir.

1 Q. And is that the intersection of Highway 64
2 and 196?

3 A. It is.

4 Q. Did you go to that light and turn right on to
5 196?

6 A. No, sir, I actually turned right here
7 (indicating).

8 Q. What is that?

9 A. That's the Renaissance Professional Park
10 which is directly next door to the Hickory Center
11 Market.

12 Q. All right. Showing you Exhibit 3.
13 What's shown in that photograph?

14 A. That is the -- the Renaissance Professional
15 Park and the Hickory Center Market, you can see it's
16 just adjacent -- adjacent to the Hickory Center
17 Market.

18 Q. Okay. Showing you Exhibit 13.
19 What's shown there?

20 A. That's an aerial view of -- the Hickory
21 Center Market is right here (indicating).

22 The Renaissance Center is coming through here
23 (indicating), that's where I exited out. I actually
24 come out on 196 right here (indicating), and that's
25 Highway 196 right there (indicating).

1 Q. Okay. What were you looking for?

2 A. I was looking for a male black subject
3 that -- that had left the area on foot. He was
4 wearing a blue or black -- blue and black checkered
5 flannel-type shirt.

6 Q. How did you receive that information?

7 A. Sergeant Maxwell, when he went -- made it to
8 the scene of the Hickory Center Market, he put that
9 information out on the radio.

10 Q. All right. Now on this map, do you see where
11 you were in relation to the Hickory Center Market
12 when the call came out?

13 A. No, sir.

14 Q. All right. That's not shown on the screen,
15 is that correct?

16 A. That's correct.

17 Q. Indicate with an X the direction it would
18 have been from the Hickory Center Market.

19 A. (Indicating).

20 Q. So you came -- is that east?

21 A. It's east.

22 Q. From the east passed the Hickory Center
23 Market --

24 A. Yes, sir.

25 Q. -- once you got the call?

1 **A.** Yes, sir.

2 **Q.** When you passed the Hickory Center Market, do
3 you know if Sergeant Maxwell was still there?

4 **A.** No, sir, he was not.

5 **Q.** Once you took this route through the
6 Renaissance's parking lot and came to 196, what did
7 you do?

8 **A.** I proceeded up this area right here
9 (indicating) and then I turned north on 196.

10 When I turned north on 196 I instructed
11 Officer Clark, because my vehicle was equipped with
12 a passenger spotlight, so I instructed him to put
13 the spotlight off in that wooded area right here
14 (indicating).

15 **Q.** Now describe specifically what an office --
16 what a spotlight is?

17 **A.** It's the -- right there by the windshield you
18 can direct the light to what direction, up, down,
19 left or right from that area right there from -- on
20 that side of the vehicle.

21 **Q.** Are you familiar with Sergeant Maxwell's
22 vehicle?

23 **A.** Yes, sir, I am.

24 **Q.** Are you familiar -- familiar with Officer
25 Gonzales' vehicle?

1 **A.** Yes, sir?

2 **Q.** Do either of those vehicles have the same
3 spotlight on the passenger's side as you described?

4 **A.** No, sir, mine was the only one that was
5 equipped like that.

6 **Q.** All right. Did Officer Clark, in fact, use
7 that spotlight as you instructed him?

8 **A.** He -- yes, sir, he did.

9 **Q.** What, if anything, happened after he began
10 using that spotlight on the wooded area?

11 **A.** Just as we proceeded north Officer Clark
12 spotted the subject in the woods just off the
13 highway. So he -- he -- he stated to me, he said,
14 there he is. I threw the car up in park. He run
15 out of the vehicle. I exited the vehicle, come
16 around and placed the -- we had the subject at
17 gunpoint because he was -- Sergeant Maxwell stated
18 that the subject was armed on the radio.

19 **Q.** Now describe how you all approached him?

20 You said he was at gunpoint, who actually
21 went to the suspect?

22 **A.** Officer Clark went to the suspect. And then
23 I stayed off to the -- at a safe distance holding --
24 holding him at the gun or at gunpoint where I
25 wouldn't -- I could actually not shoot Officer Clark

1 if I had -- if it come to that.

2 Q. What did you instruct Officer Clark to do?

3 A. Restrain him.

4 Q. Did he, in fact, restrain him?

5 A. He did.

6 Q. Describe the suspect's positioning in that
7 wooded area when you all saw him?

8 A. The subject was laying in the leaves.

9 Q. You saying "laying," describe how he was
10 laying?

11 A. He was laying on his stomach trying to hide.

12 Q. Did you all give him any orders?

13 A. Show us your hands and stay down.

14 Q. And did he comply?

15 A. He did.

16 Q. Who physically took the suspect into custody?

17 A. Officer Clark.

18 Q. Now the person on the side of the roadway
19 that Officer Clark apprehended --

20 A. Yes, sir.

21 Q. -- and actually put handcuffs on --

22 A. Yes, sir.

23 Q. -- what drew your attention to this person?

24 A. As you can see on the map, there's no houses
25 or anything in this area (indicating). So there's

1 no reason for anybody to be in that wooded area.

2 Q. What about the person's clothing drew your
3 attention?

4 A. The clothing was actually the same type of
5 clothing description as Sergeant Maxwell had put out
6 on the radio.

7 Q. I'm showing you what's been marked and
8 admitted as Exhibit 10.

9 Do you recognize this?

10 A. Yes, sir.

11 Q. What do you recognize this to be?

12 A. That's the jacket that the subject was
13 wearing that night.

14 Q. Was the subject wearing anything about his
15 head?

16 A. Yes, sir. He had a toboggan that was on his
17 head. His face was showing, but he did have a
18 toboggan on his head.

19 Q. Was that collected as evidence?

20 A. Yes, sir, it was.

21 Q. Was there anything unique about that
22 toboggan?

23 A. Yes, sir. When we took it off the subject's
24 head and rolled it out flat, it had two eyeholes cut
25 into it.

1 Q. Showing you what's been marked and admitted
2 as Exhibit 11.

3 A. Yes, sir.

4 Q. Take it, please.

5 Do you recognize that?

6 A. Yes, sir.

7 Q. What do you recognize that to be?

8 A. That's the subject, that -- that's the
9 toboggan that the subject had on his head that had
10 the eyeholes cut out in it.

11 Q. Please -- please hold it up and show the
12 ladies and gentlemen of the jury the eyeholes that
13 you're referring to.

14 A. (Indicating).

15 Q. Do those eyeholes seemed to be
16 manufactured -- is that manufactured eyeholes?

17 A. No, sir, that's homemade.

18 Q. Did you learn the identity of that person?

19 A. Yes, sir.

20 Q. Who was that person?

21 A. Robert Drew.

22 Q. I'm showing you Exhibit 15.

23 Do you recognize that?

24 A. Yes, sir.

25 Q. What is that?

1 **A.** That's a picture of the subject.

2 **Q.** Is that how the person appeared without the
3 hat on his head when y'all saw him on the side of
4 the road?

5 **A.** Yes, sir.

6 **Q.** The person that you've identified as Robert
7 Drew --

8 **A.** Yes, sir.

9 **Q.** -- in this photograph, do you seem them in
10 the courtroom today?

11 **A.** Yes, sir.

12 **Q.** Please point to that person and describe the
13 clothes he's wearing?

14 **A.** He's wearing a blue and white striped shirt
15 there.

16 **MR. BIGGERS:** May the record reflect that
17 the witness has identified the defendant, Your
18 Honor.

19 **THE COURT:** The record will reflect that
20 he's pointed out defendant.

21 **BY MR. BIGGERS:**

22 **Q.** Any other items found in that area where the
23 defendant was found on the side of the road?

24 **A.** Yes, sir.

25 **Q.** What?

1 **A.** There was a handgun revolver -- a revolver
2 that was discovered and a brown cotton-type glove.

3 **Q.** Now once the defendant was taken into
4 custody, did you all leave the scene?

5 **A.** Not for -- not for a little bit --

6 **Q.** Why?

7 **A.** -- twenty or 30 minutes.

8 Because that when we first took him into
9 custody he -- there was no weapon on his person.

10 **Q.** What -- what made you believe there would --
11 should -- would be a weapon found in that area?

12 **A.** Sergeant Maxwell and the victim -- or
13 Sergeant Maxwell stated over the radio the subject
14 was armed. So there had to be a weapon around there
15 with the clothing matching perfect.

16 **Q.** At the time did you know what type of weapon
17 you were looking for?

18 **A.** Saturday Maxwell put on the radio that it was
19 going to be a blue or black revolver, and that's
20 what I was looking for.

21 **Q.** What area did you look for the firearm?

22 **A.** I looked in the area where the subject was
23 taken into custody. And Officer Gonzales, she
24 looked in the area just south of the area.

25 **Q.** When you say just south --

1 **A.** Southeast --

2 **Q.** -- that?

3 **A.** -- southeast of where I was.

4 **Q.** Now did Officer Gonzales look on -- by
5 herself or did she have some assistance?

6 **A.** She had assistance from her K-9 partner.

7 **Q.** And why did Officer Gonzales go in that area
8 with the K-9?

9 **A.** Because that would have been in the direction
10 the subject could have come on foot.

11 **Q.** At any point did Officer Gonzales and the K-9
12 search the area where the defendant was actually
13 located?

14 **A.** No.

15 **Q.** Who searched that area?

16 **A.** I did.

17 **Q.** What, if anything, did you find -- did you
18 find in that area?

19 **A.** I -- I did locate a brown cotton glove that
20 was laying on the ground in the leaves and a .38
21 revolver.

22 **Q.** The brown cotton glove, was that consistent
23 with the glove found on the defendant's person at
24 the time that he was taken into custody?

25 **A.** Yes, sir, he had one on his person.

1 Q. He had one on his person and one was found in
2 the woods?

3 A. Yes, sir.

4 Q. All right. And was that glove found in the
5 same area as the firearm?

6 A. Approximately two foot apart.

7 Q. Showing you what's been admitted as
8 Exhibit 18.

9 Tell me if you recognize that?

10 A. I do.

11 Q. What do you recognize that to be?

12 A. These were the brown gloves that Mr. Drew had
13 on his person.

14 Q. And there are two gloves there?

15 A. Right. Well, one of them he had on his
16 person, one of them was laying in the ground.

17 Q. Could you tell which one was laying in the
18 ground?

19 A. The one with the mud.

20 Q. Describe that area on that night?

21 A. It's December, it was wet, heavily -- lot of
22 foliage, leaves that had fell on the ground -- I
23 mean, there wasn't -- the trees were sparse, but, I
24 mean, the ground was dense with leaves.

25 Q. Show you Exhibit 23.

1 Recognize what's shown in that photograph?

2 A. Yes, sir.

3 Q. What is that?

4 A. That's the area where the subject was taken
5 into custody.

6 Q. All right. Please indicate on the screen
7 roughly where the defendant was found?

8 A. Right on here (indicating), right in that
9 area right there (indicating).

10 Q. Show you Exhibit 24.

11 You see on that photograph where the
12 defendant was recovered?

13 A. Yes.

14 Q. Was it back in that treeline wooded area?

15 A. Yes, sir.

16 Q. I'm showing you a close-up photo of the same
17 area in 25.

18 Is that how the ground appeared on the night
19 of December 7th, 2012?

20 A. Yes, sir, pretty much.

21 Q. About how long did it take you to actually
22 find the firearm?

23 A. It took me approximately 20 to 30 minutes.

24 Q. Okay. Why did it take so long?

25 A. Because it was up under all of those leaves.

1 Q. At the time was the gun loaded?

2 A. Yes, sir.

3 Q. Do you recall how many rounds of ammunition
4 was in the firearm?

5 A. There was three rounds.

6 Q. Show you Exhibit 12.

7 Do you recognize that?

8 A. Yes, sir.

9 Q. What do you recognize this to be?

10 A. It appears to be the weapon that I recovered
11 in the woods that night.

12 Q. Now take a look at this firearm.

13 Now the dirt on the glove, one of the gloves
14 that you recovered from the ground?

15 A. Right.

16 Q. Do you see any traces of dirt on that
17 firearm?

18 A. No.

19 Q. Showing you Exhibit 19.

20 Do you recognize that?

21 A. Yes, sir.

22 Q. What are those?

23 A. Those were the rounds that was inside the
24 weapon.

25 Q. Was this firearm consistent with the

1 description that you received from Sergeant Maxwell?

2 A. Yes, sir.

3 Q. Now after you collected this evidence, what
4 did you do?

5 A. I placed it in evidence container.

6 Q. All right. Now did you stay on the scene on
7 the side of Highway 196?

8 A. After I located the weapon, I -- I went to
9 the scene of the -- where the actually robbery took
10 place at the Hickory Center Market or the attempted
11 robbery.

12 Q. Who was there when you arrived there?

13 A. Sergeant Maxwell.

14 Q. What did you do once you arrived at the
15 Hickory Center Market?

16 A. He wanted to take -- Sergeant Maxwell wanted
17 to take pictures of Mr. Drew and of the evidence
18 that was collected from the scene of the arrest.

19 Q. Did you all, in fact, take photographs?

20 A. We did. The weapon and the glove and the
21 mask were placed on the trunk of my car, those were
22 taken. And then the -- then Sergeant Maxwell took
23 two photos of Mr. Drew.

24 Q. Showing you Exhibit 17.

25 Do you recognize that?

1 **A.** Yes, sir.

2 **Q.** Is that one of the photographs that you took
3 on that night?

4 **A.** Yes, sir, that's the one that was taken on
5 the trunk of my car.

6 **Q.** I've already showed you -- shown you 15.
7 Is that one the photographs that you took of
8 the defendant on that night?

9 **A.** Yes, sir.

10 **Q.** Do you know if Sergeant Maxwell also took
11 this photograph in Exhibit 8?

12 **A.** Yes, sir.

13 **Q.** At any point did you go inside the Hickory
14 Center Market?

15 **A.** No, sir.

16 **Q.** Did Sergeant Maxwell?

17 **A.** Sergeants Maxwell did, yes, sir.

18 **Q.** Do you know why he went inside the Hickory
19 Center Market?

20 **A.** He went into show the victim this photo right
21 here (indicating).

22 **Q.** And you remained outside the entire time, is
23 that correct?

24 **A.** Yes, sir.

25 **Q.** Did Sergeant Maxwell come out?

1 **A.** He did.

2 **Q.** Do you know if the victim was able to
3 positively identify that photograph?

4 **A.** I can --

5 **MS. JERMANN-ROBINSON:** Objection, Your
6 Honor. He wasn't there.

7 **THE COURT:** So the objection is
8 speculation?

9 **MS. JERMANN-ROBINSON:** Speculation, Your
10 Honor.

11 **THE COURT:** I will have to sustain the
12 objection.

13 **MR. BIGGERS:** That's fine, Your Honor.

14 **BY MR. BIGGERS:**

15 **Q.** Sergeant Atkins, Sergeant Maxwell came out of
16 the Hickory Center Market after showing the victim
17 that photograph, is that correct?

18 **A.** He did.

19 **MS. JERMANN-ROBINSON:** Objection, Your
20 Honor.

21 **Q.** At that point --

22 **MS. JERMANN-ROBINSON:** Again speculation,
23 he wasn't in there.

24 **THE COURT:** You have to lay a better
25 foundation.

1 **MR. BIGGERS:** That's fine, Your Honor,
2 I'll move on.

3 **BY MR. BIGGERS:**

4 **Q.** After Sergeant Maxwell came out of the
5 Hickory Center Market with that photograph --

6 **A.** Yes, sir.

7 **Q.** -- what did you do?

8 **A.** I transported Mr. Drew to the Oakland Police
9 Department.

10 **Q.** At that point he was under arrest?

11 **A.** Yes, sir.

12 **Q.** Was he under arrest for the attempted robbery
13 of the Hickory Center Market?

14 **A.** He was.

15 **Q.** Was he charged with any other offense on that
16 evening?

17 **A.** Public intoxication.

18 **Q.** Why was that?

19 **A.** The subject had a strong odor of alcohol.

20 **Q.** Did you personally notice that?

21 **A.** I did.

22 **Q.** Did you have any conversations with the
23 defendant on that night?

24 **A.** I did.

25 **Q.** What, if anything, did the defendant say?

1 **A.** When I placed him in the car and read him his
2 Miranda rights, he stated that the only reason that
3 he was laying in those leaves was that some guys
4 come by in a white car threatened to kill him, so
5 that's why he was hiding in the weeds -- in -- in
6 the leaves.

7 **Q.** Did he say anything about drinking that
8 night?

9 **A.** I asked him if he had anything to drink and
10 he stated he didn't want to talk to me anymore.

11 **Q.** Was the defendant actually taken to the jail
12 and processed?

13 **A.** He was.

14 **Q.** What was done with his clothing?

15 **A.** I took his clothing for evidence, so they
16 were confiscated at that time.

17 **Q.** Describe the clothing that you collected ed
18 from the defendant on the night of December 7th,
19 2012?

20 **A.** I took the jacket, his white thermal shirt,
21 the bluejeans and his boots and they placed in
22 individual evidence bags.

23 **Q.** Take a look at the items in this bag,
24 Sergeant Atkins, and tell me if you recognize them?

25 **A.** I do.

1 Q. Go ahead and take them out.

2 A. These are the muddy boots that the subject
3 was wearing.

4 Q. Are those in substantially the same condition
5 as they were on December 7th, 2012, when you
6 collected them?

7 A. Yes, sir.

8 MR. BIGGERS: At this time the government
9 moves to admit the boots in evidence.

10 THE COURT: All right. Any objection?

11 MS. JERMANN-ROBINSON: No objection, Your
12 Honor.

13 THE COURT: Okay. Then we will go ahead
14 and introduce them. I believe it will be 26.

15 THE CLERK: Yes, sir.

16 THE COURT: Twenty-six.

17 (Exhibit Number 26 was marked;
18 Description: Boots.)

19 MR. BIGGERS: This is the shirt and the
20 jeans.

21 Permission to publish those, Your Honor?

22 THE COURT: Go ahead.

23 BY MR. BIGGERS:

24 Q. I will hand you another bag which I believe
25 will be 27 and 28.

1 Take a look at the items inside that bag and
2 tell me if you recognize those?

3 **A.** Yes, sir. These are the bluejeans that the
4 subject was wearing.

5 **Q.** Those jeans in substantially the same
6 condition as they were when you recovered them from
7 the defendant's person on December 7th, 2012?

8 **A.** Yes, sir, they were -- yes, sir, they are.

9 **Q.** What else is in that bag?

10 **A.** Also, it's the white thermal shirt.

11 **Q.** The defendant wearing that shirt on that
12 evening?

13 **A.** Yes, sir, he was.

14 **Q.** Is that shirt in substantially the same
15 condition as it was on that evening?

16 **A.** Yes, sir.

17 **MR. BIGGERS:** The government moves to
18 admit the jeans and the shirt as exhibits 27 and 28,
19 Your Honor.

20 **THE COURT:** All right. We will make the
21 jeans 27 and the shirt will be 28.

22 (Exhibit Number 27 was marked;
23 Description: Jeans.)

24 (Exhibit Number 28 was marked;
25 Description: Shirt.)

1 **BY MR. BIGGERS:**

2 **Q.** I'm holding these jeans up, Exhibit 27.

3 Any indication of the defendant lying in the
4 ground on these jeans?

5 **A.** Yes, sir, you can see where all the mud is on
6 the front of them.

7 **Q.** On the pants leg?

8 **A.** Yes, sir.

9 **Q.** Now I direct your attention to the back
10 collar of Exhibit 28.

11 Anything unique about that?

12 **A.** Yes, sir, it's got the subject's last name in
13 it.

14 **Q.** D-r-e-w.

15 **A.** Yes, sir.

16 **Q.** Again, this shirt was taken from the
17 defendant's person, is that correct?

18 **A.** Yes, sir.

19 **Q.** Were any of these items photographed?

20 **A.** Yes, sir.

21 **Q.** Did you personally take those photographs?

22 **A.** I did.

23 **Q.** Now did this end your investigation on that
24 night?

25 **A.** It did.

1 Q. Do you know if the firearm recovered was
2 fingerprinted at all?

3 A. Sergeant Maxwell fingerprinted it with
4 powder.

5 Q. How did you know he did that?

6 A. I observed it.

7 Q. You were present when that occurred?

8 A. Yes, sir.

9 Q. Where -- when did that happen?

10 A. Immediately after we got back to the police
11 department.

12 Q. On the night of December 7th, 2012?

13 A. Yes, sir.

14 Q. Did you share the information that your
15 investigation revealed regarding this attempted
16 robbery with any other law enforcement agency?

17 A. I did.

18 Q. Who?

19 A. Memphis Police Department.

20 Q. What made you share the information with the
21 Memphis Police Department?

22 A. My chief at the time, Chief Jewel, he had got
23 information that -- that KFC had been robbed on
24 Highway 64 in Memphis.

25 Q. Is that on Highway?

1 64 the Hickory Center Market is also on
2 Highway 64, is that correct?

3 **A.** Yes, sir.

4 **Q.** Did you learn when that robbery, the
5 attempted robbery of the KFC occurred?

6 **A.** Yes, sir, it was on the same night.

7 **Q.** After hearing that information, what did you
8 do?

9 **A.** I contacted Memphis Robbery Division.

10 **Q.** And did you hear back from anyone with the
11 Memphis Police Department?

12 **A.** I did. I did -- first, I heard back from a
13 lieutenant, I cannot think of his name at this time,
14 he asked me if I had any pictures of the clothing.
15 I told him at the time I had still shots from the
16 surveillance, and I sent those to him.

17 He contacted me back after he'd received
18 them, he said, yes, that somebody else would be
19 getting in touch with me.

20 Then I was contacted later by Detective Tony
21 Cox with the Memphis Police Department Robbery
22 Division.

23 **Q.** Now you just recounted multiple
24 conversations.

25 When did you first learn of the attempted

1 robbery in Memphis?

2 A. That would have been a Monday morning.

3 Q. Was it the night of the robbery?

4 A. No, sir, it was not.

5 Q. It would have been days later?

6 A. Approximately three.

7 Q. Approximately three days later?

8 A. Yes, sir.

9 Q. When did you have the initial conversation
10 with the lieutenant?

11 A. Like three days later, it would have been
12 that afternoon.

13 Q. On that Monday?

14 A. On that Monday.

15 Q. Did you hear back from Sergeant Tony Cox on
16 that same day?

17 A. No, sir, it was the next day.

18 Q. When you spoke to Sergeant Cox, what, if any,
19 information did you provide to him?

20 A. He asked me if I had any pictures of the
21 evidence that we took in. And if I -- if I did,
22 could I share those. And I did.

23 Q. Specifically, what did you share with him?

24 A. I shared him photos of the clothing and also
25 photos of the weapon, and the mask.

1 Q. Now at any point did you learn any additional
2 information about the attempted robbery in Memphis?

3 A. Detective Cox, he contacted me, stated that
4 he wanted to interview Mr. Drew, that he was their
5 prime suspect.

6 MS. JERMANN-ROBINSON: May we have a
7 moment, Your Honor?

8 THE COURT: All right.

9 BY MR. BIGGERS:

10 Q. And that was after you sent him the pictures,
11 is that correct?

12 A. Yes, sir.

13 Q. All right. Now were you involved in the
14 investigation of the Memphis attempted robbery at
15 all?

16 A. No, sir.

17 Q. Showing you nine photographs.

18 Please take a look at those photographs,
19 Sergeant Atkins.

20 A. Yes, sir.

21 Q. Do you recognize those photographs?

22 A. Yes, sir.

23 Q. What do you recognize those to be pictures
24 of?

25 A. Those are the pictures of the still photos

1 and the photos of the clothing that I shared with
2 Memphis.

3 **Q.** That you sent to the Memphis Police
4 Department?

5 **A.** Yes, sir.

6 **Q.** Okay. Are all those accurate -- the pictures
7 of the actual photos that you sent to the Memphis
8 Police Department?

9 **A.** Yes, sir.

10 **MR. BIGGERS:** At this time the government
11 moves to admit into evidence, Your Honor.

12 **THE COURT:** All right. Collective?

13 **MR. BIGGERS:** It can be a collective
14 exhibit, Your Honor.

15 **THE COURT:** All right. I believe you said
16 there were nine photographs there, Sergeant?

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Nine -- All right.

19 Then the nine photographs that have been
20 identified, they will be introduced collectively
21 Exhibit Number 29.

22 **MR. BIGGERS:** And just ask for
23 clarification purposes, Your Honor, there are nine
24 pages of photographs, seven pages have multiple
25 pictures on them.

1 **THE COURT:** All right.

2 (Exhibit Number 29 was marked;

3 Description: Photographs.)

4 **BY MR. BIGGERS:**

5 **Q.** The first paper of collective Exhibit 29,
6 describe what's shown there for the ladies and
7 gentlemen of the jury?

8 **A.** That's the subject when he was in the Hickory
9 Center Market holding a weapon at the clerk.

10 **Q.** The second picture of collective Exhibit 29?

11 **A.** Same photo zoomed in on the weapon. You can
12 see the hammer, thumb is on the hammer and on the
13 trigger.

14 **Q.** Third picture of collective Exhibit 29, third
15 page, rather?

16 **A.** Multiple photos of Mr. Drew's jeans and
17 shirt.

18 **Q.** The fourth page?

19 **A.** It's the underside and overside, top side of
20 the gloves, photos.

21 **Q.** Fifth page?

22 **A.** It's boots.

23 **Q.** Sixth page?

24 **A.** It's photos of the weapon that was recovered
25 from the arrest scene.

1 Q. And describe that firearm as best you can for
2 the ladies and gentlemen of the jury?

3 A. It's a .38 snub-nosed revolver, black, shiny,
4 it's in good shape.

5 Q. You say snub-nosed, what do you mean by that?

6 A. It's got a short barrel.

7 That's a picture of the mask with homemade
8 eyeholes.

9 Q. This -- this photograph, the mask appears to
10 possibly be dark, maybe black, but is this the
11 same --

12 A. Yes --

13 Q. -- is this the same mask that you identified?

14 A. Yes, sir, it is.

15 Q. And what color is it actually?

16 A. It's actually blue, a dark blue.

17 Q. That was seven, page seven.

18 What's shown on page eight?

19 A. This is the jacket that the subject was
20 wearing that night, blue and black checked, and
21 you've got that logo right there on that left front
22 pocket.

23 Q. Please circle what you're referring to?

24 A. This logo right here (indicating).

25 Q. The last of the nine pages, what's shown

1 there?

2 **A.** That's his thermal shirt, and you can see his
3 name right here (indicating).

4 **Q.** Okay. This is all the information that you
5 provided to the Memphis Police Department, is that
6 correct?

7 **A.** Yes, sir.

8 **Q.** Did you do anything else in your
9 investigation with regard to the Hickory Center
10 Market attempted robbery?

11 **A.** No, sir, my involvement with that was pretty
12 much done.

13 **Q.** Outside of relaying this information to the
14 Memphis Police Department, specifically Sergeant
15 Tony Cox, did you do anything else with regard to
16 the Memphis investigation?

17 **A.** No, sir, that was the only involvement that I
18 had to that.

19 **MR. BIGGERS:** Brief moment, Your Honor?

20 **THE COURT:** All right.

21 **BY MR. BIGGERS:**

22 **Q.** Going back to the Hickory Center Market
23 robbery, attempted robbery.

24 **A.** Yes, sir.

25 **Q.** You testified that at the time the call came

1 out it was approximately 10:17, is that correct?

2 A. Yes, sir.

3 Q. How much time passed before you actually
4 apprehended the defendant on the side of the
5 roadway?

6 A. Mr. Drew was placed in custody on the arrest
7 scene approximately three minutes later at 2220.

8 Q. Okay. 2220, is that 10:20 p.m.?

9 A. 10:20 p.m.

10 Q. The scene where he was found, how far is that
11 approximately from the actual Hickory Center Market,
12 the place of the attempted robbery?

13 A. As the crow flies, it's a thousand to
14 1500 feet.

15 MR. BIGGERS: No further questions at this
16 time, Your Honor.

17 THE COURT: Thank you.

18 And cross?

19 MS. JERMANN-ROBINSON: Thank you, Your
20 Honor.

21 CROSS EXAMINATION

22 BY MS. JERMANN-ROBINSON:

23 Q. Is it Officer Atkins.

24 A. Yes, sir.

25 Q. Mary C. Robinson for the defendant, Robert

1 Drew.

2 Do you have the address of this Hickory
3 Center Market?

4 **A.** It's 3305 Highway 64.

5 **Q.** Okay. And that's in Eads, Tennessee?

6 **A.** Yes, sir -- yes, ma'am.

7 **Q.** That's fine.

8 And that is how far from Memphis?

9 **A.** From the city limits?

10 **Q.** Well, going along Highway 64, about how far
11 till you say you get to Lakeland where the KFC is?

12 **A.** 16 miles maybe.

13 **Q.** Okay.

14 **A.** I would say from the city limits, it's three
15 miles from Memphis.

16 **Q.** Absolutely. But from that Kentucky Fried
17 Chicken?

18 **A.** Approximately 16 miles.

19 **Q.** Okay. About 16 miles.

20 **THE COURT:** Excuse me.

21 The Kentucky Fried Chicken to the market
22 or to --

23 **THE WITNESS:** From -- from the KFC on
24 Highway 64 in Lakeland to the Hickory Center Market
25 would be about 16 miles.

1 **THE COURT:** That's -- okay. All right.

2 **BY MS. JERMANN-ROBINSON:**

3 **Q.** Okay. Thank you.

4 Now you testified today that you had a
5 conversation with Mr. Drew, is that right?

6 **A.** Yes, ma'am.

7 **Q.** Okay. And you testified today that he said
8 that there was a vehicle and someone threatened to
9 kill him?

10 **A.** Yes, ma'am.

11 **Q.** Okay. And so immediately upon hearing that
12 did you radio the other officers to try to run that
13 car down?

14 **A.** No, ma'am.

15 **Q.** Okay. Did you yourself try to chase that car
16 down?

17 **A.** No, ma'am, I had him in my car, I couldn't
18 leave.

19 **Q.** You didn't, but there's other officers, we
20 know there's Gonzales and we also know that there's
21 Clark and there's other people on duty, who did you
22 call to investigate this?

23 **A.** Nobody.

24 **Q.** Nobody at all?

25 **A.** No, ma'am.

1 Q. Even though a man said he had just been
2 threatened?

3 A. Yes, ma'am.

4 Q. All right. Now as part of your
5 responsibilities as an officer, you have to
6 document, I suppose, when you make an arrest, is
7 that correct?

8 A. Yes, ma'am.

9 Q. Okay. And when you do this documentation,
10 that's for what purpose?

11 A. The evidence.

12 Q. Okay. Good. Preserve the evidence.

13 So that god forbid something happened to you,
14 it would be in writing --

15 A. Right.

16 Q. -- so that other officers could go on and
17 continue the prosecution.

18 And this -- in this -- is this called the
19 police report?

20 A. Yes, ma'am.

21 Q. Okay. And did you do a police report on this
22 incident on that evening?

23 A. Yes, ma'am.

24 Q. Okay. And as part of that police report, did
25 you write a narrative about what had happened?

1 **A.** I did.

2 **Q.** Okay. And that narrative should accurately
3 reflect the things that happened on that evening,
4 correct?

5 **A.** Yes, ma'am.

6 **Q.** Okay. Isn't it true in that narrative that
7 is supposedly accurately reflect on that evening
8 there is no mention of any statement made by
9 Mr. Drew?

10 **A.** That is true.

11 **Q.** Okay. So you didn't even write it down in
12 your report?

13 **A.** No, ma'am.

14 **Q.** Okay. And you didn't try to follow-up or
15 fine out if there was, in fact, another vehicle?

16 **A.** No, ma'am.

17 **Q.** Okay. And that was after he said this person
18 tried -- threatened to kill him?

19 **A.** That's what he stated, yes, ma'am.

20 **Q.** Okay. You -- let me make sure I got this
21 straight, kind of start from the beginning.

22 You were working the two to ten, that's the
23 Charlie shift, right?

24 **A.** Two to midnight.

25 **Q.** Two to midnight, okay.

1 And there were other -- you were actually at
2 a traffic stop when this whole thing -- when you
3 heard about this whole thing over the dispatch,
4 right?

5 **A.** Yes, ma'am.

6 **Q.** Okay. And you were not present at the
7 Hickory Center Market for the robbery, you were down
8 the road, I guess, stopping a car, something like
9 that?

10 **A.** Yes, ma'am.

11 **Q.** Okay. Was that just an incidental traffic
12 stop down the road?

13 **A.** Yes, ma'am.

14 **Q.** Okay. And when you did -- were there you
15 testified, I suppose, that you had to give the
16 person in the car, the one that you had stopped, I
17 suppose, their information back?

18 **A.** Yes, ma'am.

19 **Q.** Okay. In fact, when you arrested Mr. Drew,
20 didn't you take -- get an I.D. from him as well?

21 **A.** I don't recall an I.D.

22 **Q.** You didn't recall?

23 But you did -- were able to obtain his home
24 address, weren't you?

25 **A.** Yes, ma'am.

1 Q. Okay. And that home address was 5455 Highway
2 64, do you remember that?

3 A. Yes, ma'am.

4 Q. Okay. And that's just a little bit of ways
5 if you are going east on Highway 64, correct?

6 A. Yes, ma'am. It's going to be approximately
7 where my traffic stop was.

8 Q. Okay. Right down the road.

9 And the information that you received is that
10 the person that robbed the store was on foot when
11 they left?

12 A. Yes, ma'am.

13 Q. All right. There is no information received
14 by you that he was in any kind of vehicle or
15 anything else?

16 A. No, ma'am.

17 Q. Okay. And you testified that at some point
18 you, and I think it's patrolman, I'm not sure if
19 it's officer or patrolman Clark, you all had turned
20 out of the Renaissance Center and were going down
21 one -- Highway 196?

22 A. Going north on 196.

23 Q. Okay, you're on 196, and he spotted someone
24 in the woods?

25 A. Yes, ma'am.

1 Q. Okay. Isn't it true that he spotted someone
2 walking in the woods or walking down the street?

3 A. No, ma'am.

4 Q. Well, you don't really know what he saw, he
5 saw it first, right?

6 A. Right.

7 Q. Okay. And you testified that Officer Clark
8 gets out of the car and he goes directly to the
9 person in the woods?

10 A. Yes, ma'am.

11 Q. Okay. And so he, I guess, is the first
12 person could see what -- who this person is or what
13 they're doing?

14 A. Yes, ma'am.

15 Q. Okay. But you stayed back, you didn't go
16 with him?

17 A. I went around my vehicle and approached to
18 the -- the area that they were at, but I stayed a
19 safe distance.

20 Q. Okay. But at some point you got close enough
21 to --

22 A. I was within eight feet.

23 Q. Eight feet.

24 Okay. Well, you got close enough to Mr. --
25 within eight feet, and from that distance you could

1 smell that there was alcohol on his person or on his
2 clothes or on his breath --

3 A. Yes, ma'am.

4 Q. -- those sorts of things?

5 A. Yes, ma'am.

6 Q. Okay. Now you said there is no houses right
7 there, but there are residential areas within that
8 general area, isn't that true?

9 A. Yes, ma'am.

10 Q. Okay. In fact, Mr. Drew lives a little bit
11 down the street?

12 A. Mr. Drew lives -- not on that street.

13 Q. Not on Highway 96, but over off of Highway --
14 on Highway 64?

15 A. Approximately two miles from it.

16 Q. A couple of miles from there. Okay.

17 All right. Now you testified that you found,
18 20 or 30 minutes later you found a weapon?

19 A. Yes, ma'am.

20 Q. Okay. And within two feet of that weapon on
21 the ground also you found a glove?

22 A. Yes, ma'am.

23 Q. Okay. But -- and those were very -- those
24 two were close together?

25 A. Yes, ma'am.

1 Q. Okay. And those were right here or right
2 underneath where Mr. Drew had been laying?

3 A. Yes, ma'am.

4 Q. Okay. But you didn't find it for 20 or 30
5 minutes?

6 A. Not the weapon --

7 Q. Okay.

8 A. -- the glove I saw immediately.

9 Q. You saw the glove immediately, but it took
10 you another 20 or 30 minutes to find the weapon?

11 A. Right.

12 Q. Okay. I'm a little confused about K-9
13 partner, I guess that means you've got an officer
14 that's Gonzales and her partner is a --

15 A. A dog.

16 Q. -- a police dog?

17 Okay. And you had testified that they
18 searched somewhere else rather than where you were?

19 A. Right.

20 Q. How far away was that?

21 A. Five hundred to eight hundred feet.

22 Q. Okay. A little bit off the scene.

23 So she wouldn't -- doesn't know anything
24 about how Mr. Drew was dressed or anything like that
25 at the point that she's searching with her dog?

1 **A.** Right.

2 **Q.** Okay.

3 **MS. JERMANN-ROBINSON:** Your Honor, if I
4 may have a moment?

5 **THE COURT:** Go ahead.

6 **MS. JERMANN-ROBINSON:** Your Honor, can I
7 speak with your case manager?

8 Two of the exhibits, I need 21 through 25.

9 May I have a moment to speak with the
10 prosecutor, Your Honor?

11 I think he may have misspoke.

12 (Conference between defense counsel and
13 government counsel.)

14 **MS. JERMANN-ROBINSON:** Thank you, Your
15 Honor, for your patience.

16 **BY MS. JERMANN-ROBINSON:**

17 **Q.** I am, Officer, I'm publishing Exhibit
18 Number 21.

19 And that, of course -- is that your police
20 vehicle?

21 **A.** Yes, ma'am. That's the one I have at this
22 time.

23 **Q.** Okay. Okay. At this time.

24 So you are not telling this jury that this is
25 a picture of your police vehicle on that evening,

1 are you?

2 **A.** No, that's not the one I had at that evening.

3 **Q.** Okay. But you're saying that's -- well, let
4 me ask you.

5 When was this picture taken?

6 **A.** This picture -- I don't remember the date
7 this picture was taken.

8 **Q.** Was it taken yesterday?

9 **A.** No, ma'am.

10 **Q.** Was it taken last week?

11 **A.** It was taken some months ago.

12 **Q.** Some months ago.

13 Five months ago?

14 It wasn't taken on December the 7th, 2012?

15 **A.** No, ma'am.

16 **Q.** Okay. How long after December the 7th was
17 this picture taken?

18 **A.** Last year.

19 **Q.** Sometime last year?

20 **A.** Yes, ma'am.

21 **Q.** Okay. So less than a year from the time of
22 the occurrence?

23 **A.** Yes, ma'am.

24 **Q.** Okay. Within a year.

25 How about -- I'm publishing Exhibit

1 Number 23.

2 Was this taken -- taken at the same time as
3 the first?

4 **A.** Yes, ma'am.

5 **Q.** Okay. And that was sometime last year but
6 not December 7th, correct, or two thousand -- not
7 December 7th, 2012, sometime last year?

8 **A.** Yes, ma'am.

9 **Q.** Okay. And this is where you indicated
10 somewhere in this treeline that Mr. Drew was
11 arrested?

12 **A.** Yes, ma'am.

13 **Q.** Okay. So you waited some months afterwards
14 to go back and take a picture and you expect this
15 jury to believe you're going to be able to point out
16 where he was found?

17 **A.** Yes, ma'am.

18 **Q.** Okay. I'm sorry, publishing number 25.

19 Was this picture taken at the same time as
20 the vehicle picture and the treeline picture?

21 **A.** Yes, ma'am.

22 **Q.** Okay. So this was not taken December 7th,
23 2012, but some months later after the events?

24 **A.** Yes, ma'am.

25 **Q.** Okay. And so you went back sometime later

1 and just kind of guessed where it was that he was
2 found?

3 **A.** Yes, ma'am.

4 **Q.** Okay. Thank you.

5 Now you never, actually on the night of the
6 occurrence, I will be real specific, on December the
7 7th, 2012, you didn't actually go into the market
8 and speak with the victim, did you?

9 **A.** No, ma'am.

10 **Q.** Okay. You remained outside, you saw Maxwell
11 go in?

12 **A.** Yes, ma'am.

13 **Q.** Okay. But you were aware there was a victim?

14 **A.** I am aware.

15 **Q.** Okay. And he was the clerk in the store?

16 **A.** Yes, ma'am.

17 **Q.** And his name is Jerry Harris?

18 **A.** Yes, ma'am.

19 **Q.** Okay. And he would be the one that would
20 know best when this robbery occurred?

21 **A.** Yes, ma'am.

22 **Q.** Okay. You also testified about getting
23 together with or sharing information with Memphis
24 Police Department --

25 **A.** Yes, ma'am.

1 Q. -- is that right?

2 And you all talked about how you all were
3 going to each prosecute, I suppose, these two
4 separate crimes, correct?

5 A. Prosecution was not actually part of the
6 conversation, it was just --

7 Q. Investigation maybe?

8 A. Just shared the information that I had
9 because I heard of their crime.

10 Q. Sure. How did you hear about the crime?

11 A. Like I -- like I stated, my former chief,
12 Chief Jewel he -- he heard about it and asked me to
13 contact Memphis because of the area of location --

14 Q. Okay.

15 A. -- was so close.

16 Q. So close -- 16 miles apart?

17 A. Yes, ma'am.

18 Q. Okay.

19 A. That's approximately.

20 Q. Absolutely.

21 And in -- in return you sent photographs, I
22 guess, of the evidence that you had taken, to them?

23 A. Yes, ma'am.

24 Q. Okay. And did they send photographs of their
25 evidence to you?

1 **A.** No, ma'am, I've never seen any of Memphis'
2 information.

3 **Q.** Okay. Fair enough.

4 **MS. JERMANN-ROBINSON:** May I have one
5 moment, Your Honor?

6 I can have one additional moment, Your
7 Honor, I may be through.

8 **THE COURT:** Uh-huh.

9 **MS. JERMANN-ROBINSON:** No further
10 questions, Your Honor.

11 Thank you.

12 **THE COURT:** Okay. Thank you,
13 Ms. Robinson.

14 And is there any redirect?

15 **MR. BIGGERS:** Yes, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. BIGGERS:**

18 **Q.** Sergeant Atkins, make sure I clarify some
19 things brought up by Ms. Robinson.

20 **A.** Okay.

21 **Q.** Now I believe she said you -- she asked you
22 whether or not you guessed about the location of
23 where the firearm was recovered and where the
24 defendant was seen laying on the side of the road;
25 do you recall that?

1 **A.** I do recall that.

2 **MS. JERMANN-ROBINSON:** Objection, Your
3 Honor, leading.

4 **THE COURT:** He can direct his attention to
5 certain things. But don't lead the witness.

6 **MR. BIGGERS:** I won't, Your Honor.

7 **BY MR. BIGGERS:**

8 **Q.** Did you, in fact, guess on the location of
9 where --

10 **A.** No, sir, I knew where he was laying.

11 **Q.** I'm showing you Exhibit 14.

12 **A.** Yes, sir.

13 **Q.** Do you see on this photograph where the
14 defendant was found, the area where he was found?

15 **A.** Can you move it down just a little bit?

16 Yes.

17 **Q.** Please make an indication on the screen as to
18 where that area is.

19 **A.** (Indicating).

20 **Q.** I'm going to show you a different photograph,
21 Exhibit 13, that shows the full picture of 196.

22 **A.** Right.

23 **Q.** Now, please indicate on this photograph the
24 area?

25 **A.** It's going to be right in that area right

1 there (indicating).

2 Q. Now what are you basing that on?

3 A. The Hickory Withe Road, that area, this
4 little trail right here cut through.

5 Q. Circle it, please.

6 A. This area (indicating) I knew I was north of
7 that area and just across or just south of that one.

8 Q. Now I'm showing you Exhibit 21.

9 Do you recognize that?

10 A. Yes, sir.

11 Q. Is that the area where you -- where the
12 photograph was taken of where the defendant was
13 apprehended some -- some time after December 7th,
14 2012?

15 A. Yes, sir.

16 Q. And do you see either one of those roads that
17 you just mentioned on this photograph?

18 A. The Hickory Withe Road is right there
19 (indicating).

20 Q. That's the turnoff for Hickory Withe Road?

21 A. Yes, sir.

22 Q. Is that how you are able to identify that as
23 the area --

24 A. Yes, sir.

25 Q. -- where the defendant was located?

1 **A.** Yes, sir.

2 **Q.** Now is there any question that the person was
3 found hiding in the woods on December 7th, 2012 was
4 anyone other than the defendant Robert Drew?

5 **A.** No, sir.

6 **Q.** Is there any question as to the clothing that
7 the defendant was wearing at the time he was
8 apprehended?

9 **A.** No, sir.

10 **Q.** Now, when you first saw the defendant on the
11 side of the road, describe his posture?

12 **A.** He was laying in the -- on the ground trying
13 to hide.

14 **Q.** He was laying on the ground when you saw him?

15 **A.** Yes, sir.

16 **Q.** You never saw him walking?

17 **A.** No, ma'am -- no, sir.

18 **Q.** Is that the person --

19 **A.** Yes, sir.

20 **Q.** -- that you apprehended on that night?

21 **A.** It is.

22 **Q.** Was that clothing description that he had
23 consistent with that reported to you by Sergeant
24 Maxwell?

25 **A.** Yes, sir, it is.

1 **Q.** The firearm recovered on that night in the
2 same area where the defendant was found, was that
3 also consistent with the firearm description given
4 to you by Sergeant Maxwell?

5 **A.** It is.

6 **MR. BIGGERS:** No further questions, Your
7 Honor.

8 **THE COURT:** Thank you.

9 And recross?

10 **MS. JERMANN-ROBINSON:** No questions.

11 **THE COURT:** All right, Sergeant, thank you
12 very much for coming down. You may step down, you
13 are excused.

14 (Witness excused.)

15 **THE COURT:** Okay. How is everyone doing?

16 Anyone need a break?

17 If not, keep rolling. Good.

18 All right. If you would, please,

19 Mr. Biggers, call your next witness.

20 **MR. BIGGERS:** The government calls Jesse
21 Baker to the witness stand, Your Honor.

22 **THE COURT:** All right.

23 Okay, sir, you are good right there.

24 If you would, please, raise your right
25 hand.

1 Do you solemnly swear or affirm, under the
2 penalties of perjury, the testimony that you are
3 about to provide the court and jury in the case now
4 on trial to be the truth, the whole truth and
5 nothing but the truth, so help you God?

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** Have a seat right here if you
8 would, please.

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1 **JESSE BAKER,**
2 was thereupon called as a witness on behalf of the
3 Plaintiff, and having been first duly sworn,
4 was examined and testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MR. BIGGERS:**

7 **Q.** Good morning.
8 **A.** Good morning.
9 **Q.** Good morning.
10 Please state and spell your name for the
11 record.
12 **A.** Jesse, J-e-s-s-e, Baker, B-a-k-e-r.
13 **Q.** How old are you, Mr. Baker?
14 **A.** Twenty-six.
15 **Q.** Are you currently employed?
16 **A.** Yes, sir.
17 **Q.** Where do you -- where do you currently work?
18 **A.** AFLAC.
19 **Q.** How long have you been with AFLAC?
20 **A.** Eight months.
21 **Q.** Prior to that did you work at the KFC --
22 **A.** Yes, sir.
23 **Q.** -- on Highway 64?
24 **A.** Yes, sir.
25 **Q.** Is that at 8995 Highway 64?

1 **A.** Yes, sir.

2 **Q.** Were you working there December 2012?

3 **A.** Yes, sir.

4 **Q.** Specifically, what were your duties at the
5 KFC?

6 **A.** I was a cashier. I took money from the
7 customers and cleaned the lobby and cleaned up after
8 the mess in the back.

9 **Q.** Were you working on December 7th, 2012?

10 **A.** Yes, sir.

11 **Q.** What shift did you work on that date?

12 **A.** The night shift, four p.m. to ten p.m.

13 **MR. BIGGERS:** Permission to approach the
14 witness, Your Honor?

15 **THE COURT:** Go ahead.

16 **BY MR. BIGGERS:**

17 **Q.** Showing you two photographs.

18 Do you recognize those?

19 **A.** Yes, sir.

20 **Q.** What do you recognize those two photographs
21 to be?

22 **A.** That was my old job, KFC on Highway 64.

23 **Q.** Both of those pictures substantially depict
24 how the KFC looked on December 7th, 2012?

25 **A.** Yes, sir.

1 **MR. BIGGERS:** At this time the government
2 moves to admit the two photographs in evidence?

3 **THE COURT:** All right.

4 **MS. JERMANN-ROBINSON:** No objection.

5 **THE COURT:** Okay. Let's see, we going to
6 do them collective?

7 **MR. BIGGERS:** Yes, Your Honor, collective
8 30.

9 **THE COURT:** All right. It would be number
10 30. We will go ahead and receive them as two
11 photographs of the KFC, be Exhibit 30 collective.

12 (Exhibit Number 30 was marked;
13 Description: Photographs.)

14 **BY MR. BIGGERS:**

15 **Q.** Now, Mr. Baker, at the time or how long total
16 did you work at KFC.

17 **A.** One year and eight months.

18 **Q.** I'm showing you the first picture of
19 collective Exhibit 30.

20 What -- tell the ladies and gentlemen of the
21 jury what's shown there?

22 **A.** That is the front entrance to the KFC that I
23 worked at.

24 **Q.** The second picture of collective Exhibit 30?

25 **A.** That is the side entrance and the drive-thru

1 of the KFC that I worked at.

2 Q. Please circle the side entrance.

3 You can touch the screen and make a circle on
4 the screen.

5 A. (Indicating).

6 Q. What, if anything, happened during your shift
7 on December 7th, 2012?

8 A. Would you repeat that for me?

9 Q. What, if anything, out of the ordinary
10 happened during your shift on the night of December
11 7th, 2012?

12 A. At about 9:30 p.m. I was -- I had someone
13 come in, put a gun to my head and asked me to empty
14 the register for them.

15 Q. Is that the first time you had ever had this
16 happen to you?

17 A. Yes, sir.

18 Q. How did that make you feel?

19 A. A little frightened for my life.

20 Q. Would you describe specifically what that
21 person said to you?

22 A. He came in, pointed a gun at me, asked me to
23 open the register and give him all the money -- told
24 me. I told him I couldn't. And then he told me
25 that he would kill me if I didn't open the register

1 and give him the money. And I still told him that I
2 couldn't. And then he ran out the door.

3 Q. Describe as best you can for the ladies and
4 gentlemen of the jury what that person was wearing?

5 A. A blue checkered flannel shirt, a black ski
6 mask, and one glove.

7 Q. Did you get a look at the firearm?

8 A. Yes, sir.

9 Q. Describe that firearm for the ladies and
10 gentlemen of the jury?

11 A. From what I saw, it was silver snub-nosed
12 revolver.

13 Q. When you say "snub-nosed," what do you mean
14 by that?

15 A. A short barreled revolver.

16 Q. Approximately how far was the robber from you
17 at the time he held that gun to your face?

18 A. Roughly about three, four feet.

19 Q. What did you do when ordered to give the
20 robber the money out of the drawer?

21 A. I actually believed that I couldn't do it
22 because I believed that I had to have a key to open
23 the register, so I thought that I could not get it
24 for him so -- which is why I told him that I can't
25 get it for you.

1 Q. Did the robber get any money?

2 A. No, sir.

3 Q. About how long did this entire attempted
4 robbery take?

5 A. Seemed like about 20 minutes, but probably
6 about a total of five or six minutes.

7 Q. Showing you a disk, Mr. Baker.

8 Tell me if you recognize that disk?

9 A. Yes, sir.

10 Q. What is that disk?

11 A. That is the video footage from the
12 surveillance cameras of the night of the robbery.

13 Q. And how do you know that's what's contained
14 on that disk?

15 A. Because that's what's been shown to me.

16 Q. Have you had an opportunity to review that
17 video surveillance --

18 A. Yes, sir.

19 Q. -- to determine if it's an accurate depiction
20 of what occurred during and around the time of the
21 robbery on December 7th, 2012?

22 A. Yes, sir.

23 Q. And have you initialed that and dated it
24 indicating that it is an accurate copy of that?

25 A. Yes, sir.

1 **MR. BIGGERS:** At this time the government
2 moves to admit into evidence as Exhibit 31.

3 **THE COURT:** Any objection?

4 **MS. JERMANN-ROBINSON:** No objection at
5 all, Your Honor.

6 **THE COURT:** All right. Then we will go
7 ahead and receive the disk as identified.

8 It will be Exhibit 31.

9 (Exhibit Number 31 was marked;
10 Description: Disk.)

11 **MR. BIGGERS:** Permission to publish, Your
12 Honor.

13 **THE COURT:** Go ahead.

14 **MS. JERMANN-ROBINSON:** I'm sorry, Your
15 Honor.

16 What numbered exhibit is that?

17 **THE COURT:** Thirty-one.

18 **MS. JERMANN-ROBINSON:** Thirty-one, thank
19 you.

20 **BY MR. BIGGERS:**

21 **Q.** On the screen, going to play one of the views
22 of the attempted robbery that occurred on December
23 7th, 2012.

24 Now do you have it up on your screen?

25 **A.** Yes, sir.

1 Q. Describe for the ladies and gentlemen of the
2 jury what is shown on the screen right now?

3 A. Right now it's showing me with a rag in my
4 hand walking back to start making this lady's order
5 that I just took which this is the lady that ordered
6 right before I got robbed that night.

7 Q. Please play it.

8 (Videotaping playing.)

9 **BY MR. BIGGERS:**

10 Q. Now which direction is she going?

11 A. She went out the door.

12 Q. Is that the front door or the side door?

13 A. The side door.

14 Q. What's going on right now?

15 A. I am having the gun pointed at me and being
16 asked to empty the register.

17 Q. What is that -- pause, please.

18 What is that in the robber suspect's right
19 hand?

20 A. The gun that he used to rob us.

21 Q. At that time could you tell if he had a glove
22 on the hand that is holding the gun?

23 A. I believe that it did. It doesn't look like
24 there is one here.

25 Q. Play it, please.

1 He is doing something with his left hand?

2 A. Pointing at the register.

3 Q. At any point did you see him actually touch
4 the register?

5 A. No, sir.

6 Q. What is he doing now?

7 A. He is walking out the door.

8 Q. What are you doing?

9 A. I just called my manager. And told her to
10 call the cops and I'm walking to the bathroom to
11 make sure he's gone.

12 Q. I did not see anyone other than yourself as
13 far as KFC employees shown in that clip.

14 Was there anyone else inside -- is there
15 anyone else that was an employee of the KFC that
16 came into contact with the robbery suspect?

17 A. No, sir.

18 Q. Were you the only person that the robbery
19 suspect addressed or encountered?

20 A. Yes, sir.

21 Q. Play the second clip, please.

22 What view is this, Mr. Baker?

23 A. This is the view of the lobby where the
24 register is.

25 Q. And I see -- what is that at the top of the

1 screen?

2 A. What -- which top of the screen?

3 Q. Right next to the number six where the lady
4 is walking out.

5 A. That is the side entrance.

6 Q. Play it a little bit further, please.

7 Hold it right there.

8 Who just came in?

9 A. The guy that robbed me.

10 Q. Now at the time could you see the robber's
11 face?

12 A. No, sir.

13 Q. Why not?

14 A. Because he had a mask on.

15 Q. Did the mask have any -- well, how was the
16 robber able to see?

17 A. It had two holes in the eyes for him to be
18 able to see.

19 Q. Describe that jacket as best you can?

20 A. Blue, checkered on it. Has little embroidery
21 right there (indicating), and it has a hood on the
22 back of it.

23 Q. When you say embroidery right there, please
24 indicate on the screen what you are referring to?

25 You can touch the screen and circle it.

1 **A.** (Indicating).

2 **Q.** Play, continue to play, please.

3 Pause it again.

4 Do you see a closer up view of that jacket?

5 **A.** Yes.

6 **Q.** Closer up view of that emblem on the jacket?

7 **A.** Yes.

8 **Q.** Please circle that again.

9 **A.** (Indicating).

10 **Q.** And this time can you see if the robber has
11 anything covering his left hand?

12 **A.** Yes, he has a glove on his left hand.

13 **Q.** Continue playing.

14 Now at the time could you tell if the robber
15 suspect -- could you tell the race of the robbery
16 suspect?

17 **A.** Yes.

18 **Q.** How could you tell that?

19 **A.** By the sound of his voice and by the eyes
20 because it wasn't completely covering his skin where
21 the eyes were cut out.

22 **Q.** What was -- what was his race?

23 **A.** African-American.

24 **Q.** You know if the police were called?

25 **A.** Yes, sir.

1 Q. Did the police respond to the scene?

2 A. Yes, sir.

3 Q. Did it take a long time or a short time for
4 the police to respond?

5 A. A short time.

6 Q. Did you speak to them once they arrived?

7 A. Yes.

8 Q. Were you able to provide them with a suspect
9 description?

10 A. Yes.

11 Q. What did you tell them?

12 A. He was about five 11, a hundred and 85 pounds
13 in between his thirty -- mid-thirties, mid-forties,
14 and male African-American. And that he had the blue
15 checkered jacket on and a black hood on and a black
16 mask and the description of the gun.

17 Q. Now, when was the first time that you had an
18 opportunity to view this video?

19 Was it the night of December 7th, 2012?

20 A. No, sir.

21 Q. How many times did you actually speak to the
22 police regarding this incident as far as giving an
23 account or a description of the suspect?

24 A. Twice.

25 Q. Twice.

1 What -- the first time was it on the night of
2 December the 7th, 2012?

3 **A.** Yes, sir.

4 **Q.** When was the second time?

5 **A.** The second time was about four days later.

6 **Q.** Who did you speak to on that occasion?

7 **A.** An officer came and got me and they took my
8 statement.

9 **Q.** Did you tell them substantially the same
10 thing that you told the officers that responded to
11 the scene on December the 7th, 2012?

12 **A.** Yes, I did.

13 **Q.** Do you recall the description of the firearm
14 that you gave?

15 **A.** Yes. I said it's silver snub-nosed, short
16 barreled gun, revolver.

17 **Q.** Sometime after giving those two statements
18 did you have an opportunity to review this video?

19 **A.** Yes, sir.

20 **Q.** Please play that first clip.

21 While you are putting that up --

22 **MR. BIGGERS:** Your Honor, if the court
23 will indulge the government, I would like to ask
24 Mr. Baker to stand and demonstrate for the ladies
25 and gentlemen of the jury his view of the gun on the

1 night of December the 7th, 2012?

2 **THE COURT:** Go ahead.

3 (Witness demonstrating.)

4 **BY MR. BIGGERS:**

5 **Q.** Is that the angle of the firearm that you had
6 on that night?

7 **A.** Yes, sir.

8 **Q.** And on the night of the robbery, what color
9 did the snub-nosed revolver appear to be to you?

10 **A.** Silver.

11 **Q.** After reviewing the video, what color did the
12 firearm appear to be based on the video?

13 **A.** Black.

14 **Q.** Please play that portion of the clip.

15 (Videotape playing.)

16 **MR. BIGGERS:** Hold it right there -- play
17 it a little bit. Right there.

18 **BY MR. BIGGERS:**

19 **Q.** All right. Is this the video angle that you
20 saw?

21 **A.** Yes, sir.

22 **Q.** And on this video what color does that
23 snub-nosed revolver appear to be?

24 **A.** Black.

25 **Q.** On the night of December 7th, 2012, to your

1 knowledge did the police apprehend anyone in
2 relation to this attempted robbery?

3 **A.** No.

4 **Q.** Did you ever see the face of the person that
5 attempted to rob you on that night?

6 **A.** No.

7 **Q.** Have you ever seen the face of the person who
8 attempted to rob you on that night to your
9 knowledge?

10 **A.** No.

11 **Q.** If you saw him today, would you be able to
12 identify him?

13 **A.** No.

14 **Q.** Why not?

15 **A.** Because I didn't see his face, he had a mask
16 on.

17 **Q.** Did you get a good look at the actual
18 clothing that he was wearing?

19 **A.** Yes.

20 **Q.** Is that the same clothing that is depicted in
21 that video?

22 **A.** Yes.

23 **Q.** If you saw that jacket again would you be
24 able to recognize it?

25 **A.** Yes.

1 Q. I'm showing you what's been marked and
2 admitted as Exhibit 10.

3 Do you recognize that?

4 A. Yes.

5 Q. Does it appear to be the same jacket as the
6 robber wore on the night of December 7th, 2012, when
7 he pointed the gun to your face at the KFC on
8 Highway 64?

9 A. Yes, that's the jacket he was wearing.

10 Q. Anything unique about his jacket that would
11 lead you to that conclusion?

12 A. Black hood and blue checkers and embroidery
13 logo on the pocket.

14 MR. BIGGERS: Brief moment, Your Honor.

15 THE COURT: Okay.

16 MR. BIGGERS: No further questions of the
17 witness at this time, Your Honor.

18 THE COURT: All right, thank you.

19 And is there cross?

20 MS. JERMANN-ROBINSON: Yes, Your Honor.

21 If I may, for ease, I may ask to use the
22 agent over here to bring that video back up, the
23 second clip, right around 432.

24 **CROSS EXAMINATION**

25

1 **BY MS. JERMANN-ROBINSON:**

2 **Q.** While he is doing that, I'm Mary C. Robinson,
3 I represent Robert Drew.

4 **MS. JERMANN-ROBINSON:** If you will stop it
5 for just -- once you get it to 432.

6 Thank you.

7 **BY MS. JERMANN-ROBINSON:**

8 **Q.** Now you testified that this is the jacket
9 that you saw and it's the jacket in the video, but
10 isn't it true that at some point later, after you
11 talked to officers, it was determined that what's in
12 this picture is not this jacket but it is actually a
13 bubble jacket?

14 **A.** No.

15 **Q.** Take a look at it.

16 **MS. JERMANN-ROBINSON:** Can you go to 432.

17 (Videotape playing.)

18 **BY MS. JERMANN-ROBINSON:**

19 **Q.** We see the woman walking out --

20 **A VOICE:** Continue.

21 **MS. JERMANN-ROBINSON:** Ought to be, we're
22 good for now, but keep going through.

23 Thank you.

24 **BY MS. JERMANN-ROBINSON:**

25 **Q.** You see an individual walking in --

1 **MS. JERMANN-ROBINSON:** Stop it right
2 there.

3 Let me backup just a little bit.

4 Okay. Stop it.

5 Now move forward.

6 Stop right there.

7 **BY MS. JERMANN-ROBINSON:**

8 **Q.** You're telling me that's not a bubble jacket?

9 **A.** Yes, ma'am, that's exactly what I'm telling
10 you.

11 **Q.** Okay. Let's keep moving forward.

12 **MS. JERMANN-ROBINSON:** Stop right here.

13 Actually you can go a little further.

14 Right there.

15 **BY MS. JERMANN-ROBINSON:**

16 **Q.** Now it appears to be plaid, but, in fact,
17 isn't it puffy, can't you see the puffs in that
18 jacket?

19 **A.** No, ma'am.

20 **Q.** Okay.

21 **MS. JERMANN-ROBINSON:** Let's roll it
22 forward.

23 Right there.

24 **BY MS. JERMANN-ROBINSON:**

25 **Q.** You still so sure?

1 **A.** No. I can see where you get that, that's
2 also a camera lens angle.

3 **Q.** Okay.

4 **MS. JERMANN-ROBINSON:** Let's roll it,
5 let's keep going.

6 Stop it right there.

7 **BY MS. JERMANN-ROBINSON:**

8 **Q.** You still so certain that's a flannel jacket?

9 **A.** Yes.

10 **Q.** Okay.

11 **MS. JERMANN-ROBINSON:** Go ahead and roll
12 probably the next ten seconds.

13 And stop.

14 Thank you so much, Agent Reed.

15 **BY MS. JERMANN-ROBINSON:**

16 **Q.** Now when you saw this individual leave, you
17 didn't run out the door, he was on foot when he came
18 in and on foot when he left?

19 **A.** Yes, ma'am.

20 **Q.** Okay. And he -- you testified and you were
21 given a statement or they took a statement -- strike
22 all of that.

23 You gave a statement at some point, I guess
24 four days later, to law enforcement?

25 **A.** Yes, ma'am.

1 Q. Okay. And you would recognize that statement
2 if you saw it?

3 A. Yes, ma'am.

4 Q. Okay. And isn't it true in that statement
5 you clearly described a silver weapon, is that
6 right?

7 A. Yes, ma'am.

8 Q. Okay. And you've worked at the Kentucky
9 Fried Chicken for about a year and eight months,
10 right?

11 A. Yes, ma'am.

12 Q. And it's kind of a bright shiny place, it's
13 well lit, correct?

14 A. No, ma'am.

15 Q. You're telling us it's a dark place?

16 A. At night it is.

17 Q. But it's dark outside, but within the actual
18 store, you're telling me it's dark in there?

19 A. No, it's very well lit in the store, yes,
20 ma'am.

21 Q. Okay. Thank you, thank you, I wasn't trying
22 to trick you, I promise.

23 It's well lit and it's clean, you know,
24 because people eat food there?

25 A. Yes.

1 Q. Okay. And you've looked at this video
2 several times, it's a little murkier when you look
3 at the video, isn't it?

4 A. Yes, ma'am.

5 Q. Obviously your eyes probably see better,
6 right because it's brighter than it looks in this
7 video?

8 A. Yes, ma'am.

9 Q. Okay. Were you -- I know you testified that
10 you couldn't see the face.

11 Were you ever called upon to look at
12 photographs of any suspects or anything like that?

13 A. No.

14 Q. Okay. Were you shown any photographs at all
15 of clothing?

16 A. No, ma'am.

17 Q. Okay. Were you actually shown this jacket at
18 any point?

19 A. Not until the very last time that I met with
20 the prosecutors.

21 Q. Okay. So you have seen this jacket before?

22 A. Yes.

23 Q. Okay. And you met with -- is that
24 Mr. Biggers or someone else?

25 A. Mr. Biggers, yes.

1 Q. Okay. So you had seen that jacket prior to
2 coming into court?

3 A. Yes.

4 Q. Okay. And was it -- did you see it in a
5 paper bag or was it already laying out?

6 A. It was in a paper bag.

7 Q. Okay. So that -- was that an evidence bag to
8 the best of your knowledge?

9 A. Yes, ma'am.

10 Q. Okay. So they pulled, someone, an agent or
11 Mr. Biggers, pulled that jacket out and showed --
12 told you that that was the jacket that was worn by
13 the robber?

14 A. Yes, ma'am.

15 Q. Okay.

16 A. Well, they asked me --

17 Q. Okay.

18 A. -- if that was the jacket?

19 Q. Fair enough. Okay.

20 But they pulled that out of an evidence bag
21 and you were at the police station when that
22 happened?

23 A. I was in this building.

24 Q. You were in this building --

25 A. Yes.

1 Q. Okay. You were in Mr. Biggers' office in the
2 U. S. Attorney's office?

3 A. Yes, ma'am.

4 Q. Okay. So you were -- and that was in
5 preparation for this testimony?

6 A. Yes, ma'am.

7 Q. Okay. You know the address of that Kentucky
8 Fried Chicken?

9 A. 8995 U. S. Highway 64.

10 Q. Thank you.

11 MS. JERMANN-ROBINSON: If I could have one
12 moment, Your Honor?

13 THE COURT: Okay.

14 MS. JERMANN-ROBINSON: Thank you, Your
15 Honor.

16 BY MS. JERMANN-ROBINSON:

17 Q. I'm not sure, but is there an indication of
18 what time it is -- there it is.

19 In looking at this video can you see what
20 time it is, just from the still shot even, right
21 after this individual left the store?

22 A. 9:35 and 44 seconds.

23 Q. Is that the twenty-one thirty-five forty-one?

24 A. Yes, ma'am.

25 Q. Okay. So that would be 9:35 or so in the

1 evening?

2 **A.** Yes, ma'am.

3 **Q.** And this all happened fairly quickly?

4 **A.** Yes, ma'am.

5 **MS. JERMANN-ROBINSON:** One moment, Your
6 Honor, I may be through.

7 Nothing further, Your Honor.

8 Thank you.

9 **THE COURT:** All right.

10 Any redirect?

11 **MR. BIGGERS:** Yes, Your Honor.

12 **THE COURT:** All right.

13 **REDIRECT EXAMINATION**

14 **BY MR. BIGGERS:**

15 **Q.** Mr. Baker, defense counsel asked you multiple
16 questions about the actual jacket and whether or not
17 it was, in fact, a bubble jacket, is that correct?

18 **A.** Yes, sir.

19 **Q.** Do you recall giving a statement to law
20 enforcement, an actual detective, days after the
21 robbery?

22 **A.** Yes, sir.

23 **Q.** In that statement did you give a description
24 of the actual jacket worn by the attempted robber?

25 **A.** Yes, sir.

1 Q. Do you recall what that was?

2 A. It was a blue checkered flannel jacket.

3 MR. BIGGERS: Permission to approach the
4 witness, Your Honor, with the statement?

5 THE COURT: Go ahead.

6 BY MR. BIGGERS:

7 Q. This is the statement that you gave to the
8 Memphis police detectives, is that correct?

9 A. Yes, it is.

10 Q. Do you see a date as to when that statement
11 was taken from you?

12 A. Tuesday, December 11th, 2012.

13 Q. Within that statement do you see a
14 description that you gave to the Memphis police
15 detective of the actual suspect clothing?

16 A. Yes, I do.

17 Q. Does it mention the jacket?

18 A. Yes, it does.

19 Q. What does it say?

20 A. It says, wearing a blue flannel jacket.

21 Q. Is that what you actually provided to the
22 Memphis police detective when you gave a formal
23 statement, is that correct?

24 A. Yes, sir, it was.

25 Q. Now on the night of the robbery, attempted

1 robbery, December 7th, 2012, you did, in fact, tell
2 the officers that responded to the scene what you
3 saw?

4 **A.** Yes, I did.

5 **Q.** Okay. Your testimony is you told them the
6 exact same thing, is that correct?

7 **A.** Yes, I did.

8 **MR. BIGGERS:** Would you please play that
9 video for me.

10 **A VOICE:** One or two?

11 That -- that one.

12 (videotape playing.)

13 Would you pause it right there.

14 **BY MR. BIGGERS:**

15 **Q.** Mr. Baker, is there any question in your mind
16 as to whether or not the jacket shown there in the
17 surveillance video and the jacket in Exhibit 10 that
18 I'm holding in my hand are the same jacket?

19 **A.** There is no question at all in my mind.

20 **Q.** And what are you basing that on?

21 **A.** Based on that's -- that's the jacket that I
22 saw that night, the hood, the blue checkers, and the
23 flannel and the embroidering.

24 **MR. BIGGERS:** No further questions, Your
25 Honor.

1 **THE COURT:** Thank you.

2 And recross?

3 **MS. JERMANN-ROBINSON:** Thank you.

4 **RECROSS EXAMINATION**

5 **BY MS. JERMANN-ROBINSON:**

6 **Q.** Mr. Baker --

7 **A.** Yes, ma'am.

8 **Q.** -- you just spoke that your statement that
9 you gave, I guess, on -- some days after the robbery
10 took place?

11 **A.** Yes, ma'am.

12 **Q.** And that is your statement?

13 **A.** Yes, ma'am.

14 **Q.** Okay. And isn't it true that nowhere in this
15 statement do you say that there is any kind of
16 emblem on this jacket that you reported to the
17 police this man was wearing?

18 **A.** Yes, ma'am, that's true.

19 **Q.** No mention of that at all?

20 **A.** No, ma'am.

21 **Q.** That just comes up today?

22 Correct?

23 **A.** Yeah, but I saw it that night.

24 **Q.** Okay.

25 **MS. JERMANN-ROBINSON:** Nothing further?

1 **THE COURT:** All right.

2 Thank you, sir, for coming down today.

3 You can step down, you are excused.

4 (Witness excused.)

5 **THE COURT:** Go ahead and take a brief
6 recess about ten, 15 minutes or so and then we will
7 get back to it. I would like to get on with the
8 next witness before lunch.

9 We will break at about 12:30 for lunch and
10 it will be plenty of time for everyone to get
11 lunch -- I was just double-checking, I forgot to let
12 y'all know yesterday that, you know, we try to get
13 lunch for you. Okay. And I'm not sure if it is in
14 yet, but, like I say, we will work until about
15 12:30.

16 Now you don't have to take the lunch if
17 you don't want to. I mean, if you want to walk out
18 on the mall and get a burger or something like that,
19 you are free to do that, too. Okay.

20 But we're going to go ahead and take a
21 brief recess for just a few minutes, like I say
22 about ten or 15 minutes.

23 Remember my instructions to you, leave
24 your notebooks in the chair. Don't discuss the case
25 amongst yourselves or allow anyone to discuss it

1 with you on the break.

2 See you back in about ten or 15 minutes.

3 (Jury out at 11:30 a.m.)

4 **THE COURT:** Okay. We will be in recess.

5 **THE CLERK:** The court stands in recess.

6 (Recess at 11:30 a.m.)

7 **THE COURT:** All right. Do we have a
8 request to turn off the light for the next showing
9 of the video, is that what it is?

10 **MR. BIGGERS:** Yes -- not the next witness,
11 Your Honor, but it will be the second witness.

12 **THE COURT:** All right.

13 **MR. BIGGERS:** The second, third and fourth
14 witnesses.

15 **THE COURT:** All right. So you don't need
16 it for the next witness?

17 **MR. BIGGERS:** Don't need it for the next
18 witness, Your Honor.

19 **THE COURT:** Okay. All right. Unless
20 there's anything else, let's bring in the jury and
21 get started.

22 Okay. Bring them in.

23 (Jury present at 11:48 a.m.)

24 **THE COURT:** Okay, folks, we are ready to
25 get started again. So I think we finished with the

1 last witness.

2 Mr. Biggers, Mr. Stringfellow, call the
3 next witness. The government calls Officer Sam
4 Stewart.

5 **THE COURT:** All right.

6 Okay, Officer, you are good right there.

7 Raise your right hand.

8 Do you solemnly swear or affirm, under the
9 penalties of perjury, the testimony that you are
10 about to provide the court and jury in the case now
11 on trial to be the truth, the whole truth and
12 nothing but the truth, so help you God?

13 **THE WITNESS:** I do.

14 **THE COURT:** Please have a seat right here.

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SAM STEWART,

was thereupon called as a witness on behalf of the
Plaintiff, and having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STRINGFELLOW:

Q. State and spell your name for the record.

A. I'm sorry, sir.

Q. State and spell your name for the record.

A. Okay. Sam Stewart, S-a-m S-t-e-w-a-r-t.

Q. You work for MPD, Officer Stewart?

A. I do.

Q. What do you do?

A. I'm in uniform patrol at Appling Farms.

Q. How long have you worked with MPD?

A. A little over eight years.

Q. And what does a patrol officer do?

A. We answer calls for service.

Q. In December 7th, 2012, were you working as a
patrol officer that night?

A. I was.

Q. While working as a patrol office, did you all
receive a call about a robbery in progress?

A. We did.

Q. Where were you when you received that call?

1 **A.** We were on patrol in our ward in the area of
2 Cordova, Germantown area.

3 **Q.** When the call came in, what did you all do?

4 **A.** We responded appropriately with blue lights
5 and sirens to the holdup.

6 **Q.** Where was the call or what -- what area was
7 the call coming from?

8 **A.** It was coming from the Kentucky Fried Chicken
9 at 8995 Highway 64.

10 **Q.** How long did it take you to get to the
11 Kentucky Fried Chicken?

12 **A.** I don't have exacts, but less than five
13 minutes.

14 **Q.** When you all arrived, what did you do?

15 **A.** When we arrive on something like that we park
16 strategically for our safety in case the suspect is
17 still on the scene. We enter the business, make
18 sure that -- you try to find out if the suspect is
19 there or not, and secure the area.

20 **Q.** Did you actually have a partner with you that
21 night?

22 **A.** I did.

23 **Q.** And who was that?

24 **A.** Officer Herbert.

25 **Q.** Were you driving or was he?

1 **A.** He was driving.

2 **Q.** And when you all arrived, I'm showing you
3 Exhibit 30.

4 **A.** Uh-huh.

5 **Q.** Is that the KFC or the front of the KFC?

6 **A.** That is.

7 **Q.** And when you all arrived, would you please
8 point to where you all parked on this photograph?

9 **A.** We parked, we came in from this side and we
10 parked over here to the -- be the east side.

11 **Q.** Officer Stewart, it's actually a touch screen
12 so you can --

13 **A.** Okay. Be (indicating).

14 **Q.** If you just mark an X.

15 **A.** Okay. (Indicating).

16 **Q.** After you all parked, what did you do?

17 **A.** We scanned the business to check and see if
18 there was anyone running, like a suspect or anything
19 like that.

20 And the lights were on inside and we could
21 know -- we could see that the employees were huddled
22 kind of in a group in the middle of the store. And
23 so I made -- we made our way around to the entrance
24 and they had to unlock the door and let us in.

25 **Q.** Is that the -- would you please indicate

1 which entrance you are referring to?

2 **A.** Yes, it would be on the west side right here
3 (indicating).

4 **Q.** I'm sorry, would you please indicate again?

5 **A.** Okay. On the west side (indicating).

6 **Q.** And were you all the first on the scene?

7 **A.** Yes.

8 **Q.** When you all went inside the store, what were
9 the employees doing?

10 **A.** They were all pretty much had gathered and
11 were talking about what had happened and were
12 physically, you know, mentally shaken about the
13 event that had occurred.

14 **Q.** And what did they tell you happened?

15 **A.** That we've been robbed, you know.

16 **Q.** Did you talk to the individual who was
17 working the cash register?

18 **A.** Yes. Yes.

19 **Q.** What did he tell you?

20 **MS. JERMANN-ROBINSON:** Objection, Your
21 Honor, hearsay.

22 **THE COURT:** How do you respond to hearsay
23 objection?

24 **MR. STRINGFELLOW:** Your Honor, we are not
25 offering it for its truth but to show the steps he

1 took during the course of the investigation.

2 **THE COURT:** Then ask him what he did as
3 far as when he was on the scene there investigating.

4 At this point I will sustain the
5 objection.

6 **BY MR. STRINGFELLOW:**

7 **Q.** When you go inside -- what -- what did you do
8 as part of your investigation?

9 **A.** On -- the first thing we do is we try to find
10 the -- the person, the employee or the manager or
11 whoever was on duty that interacted with the
12 suspect. They're our best help with getting a
13 description.

14 So after a brief walk-thru and talk to the
15 employees we discovered that Mr. Jesse Baker, who
16 was the clerk, had had the most contact with the
17 suspect. And so we began asking him, you know, what
18 happened.

19 **Q.** What condition was Mr. Baker in when you all
20 got there?

21 **A.** Well, he was -- he was visibly shaken, upset,
22 almost looked like in mild shock, you know, a lot of
23 victims get that way when they've had a weapon
24 pointed at them.

25 **Q.** Did he provide you with a description of the

1 suspect?

2 **A.** He did.

3 **Q.** What was that?

4 **MS. JERMANN-ROBINSON:** Objection, Your
5 Honor. Calls for hearsay.

6 **THE COURT:** Sustained.

7 **BY MR. STRINGFELLOW:**

8 **Q.** After talking with Mr. Baker, did you have a
9 name of a suspect?

10 **A.** No.

11 **Q.** Did you have a face, did he see the face?

12 **A.** No.

13 **Q.** What did you have?

14 **A.** Clothing description.

15 **Q.** And did he -- more specifically, what type of
16 clothing?

17 **MS. JERMANN-ROBINSON:** Your Honor, I'm
18 going to object again. It still calls for hearsay.

19 **THE COURT:** Sustained.

20 **BY MR. STRINGFELLOW:**

21 **Q.** So he's given you -- you don't have a name,
22 you don't have a face but he gave you a description
23 of the clothing.

24 Did you then broadcast that description?

25 **A.** I did.

1 Q. And after broadcasting that description, what
2 did you do?

3 A. After -- our policy, when he make the scene
4 on a robbery like that, what we are trained to do is
5 put out that broadcast because that enables the
6 other cars in the area, we immediately notify the
7 area that we've got the scene, the suspect has left
8 and we need those other cars to check the area for
9 the suspect. That's our best chance of catching
10 him.

11 So as quickly as we can, that's our number
12 one priority besides making sure everyone is safe is
13 get that broadcast out.

14 After I did that, I immediately -- to the
15 west there after we were advised that's the way that
16 the robber ran, that's my area, I know the employees
17 up at the Pizza Hut and the Circle K, so I
18 immediately went up there asking for help in
19 determining, you know, more of a physical
20 description on this guy, and maybe if he had a
21 vehicle or what he did.

22 While my partner Herbert went to the -- went
23 with the manager to try to view video to help us,
24 also.

25 Q. Did you take a written statement from

1 Mr. Baker?

2 A. I did not, no.

3 Q. Why not?

4 A. That wasn't part of my investigation at that
5 time.

6 Q. And you said that your partner spoke to the
7 manager?

8 A. Uh-huh. Or whoever was in charge that was
9 able to -- to get -- to try to operate the video
10 equipment.

11 Q. Are you aware after watching the video that
12 what was seen on the video was consistent with the
13 victim's description of the suspect?

14 A. That's what I was told, yes.

15 MR. STRINGFELLOW: Your Honor, may I have
16 a moment?

17 THE COURT: All right.

18 BY MR. STRINGFELLOW:

19 Q. Office Stewart, just a few more questions.
20 Was any money taken during this robbery?

21 A. No.

22 Q. Were any of the other employees able to
23 provide any information about the robbery suspect?

24 A. None that was -- that I can recall.

25 Q. Do you know if any fingerprints were taken?

1 **A.** There was no fingerprints taken.

2 **Q.** And why is that?

3 **A.** Because after my partner advised, he viewed
4 the video, the suspect had on gloves.

5 **MR. STRINGFELLOW:** No further questions,
6 Your Honor.

7 **THE COURT:** Thank you.
8 And is there cross.

9 **MS. JERMANN-ROBINSON:** Can I have just one
10 moment, Your Honor?

11 **THE COURT:** All right.

12 **MS. JERMANN-ROBINSON:** No questions, Your
13 Honor.

14 **THE COURT:** Thank you.
15 Patrolman Stewart, you can step down, you
16 are excused.

17 **THE WITNESS:** All right.

18 (Witness excused.)

19 **THE COURT:** I think we will go ahead and
20 break a little early for lunch today, we're going to
21 break now at noon. The reason is that your lunch is
22 here. Okay. And if it was sandwiches, I was going
23 to say we could work a little longer, but they say
24 it is hot and you have to microwave if -- and all of
25 that, so I give in, so we are going to have lunch

1 just a little earlier. Okay.

2 So we are going to start, we'll come,
3 let's make it 1:15 rather than one o'clock because
4 you have to go to where the lunch is and things like
5 that that, should give you plenty of time. Okay.

6 So remember the instructions, they are
7 always the same, leave your notebooks in the chairs,
8 don't discuss the case when you are out and about,
9 don't let anyone discuss it with you. And when you
10 are finished, go directly back into the jury room
11 and we will get started right at 1:15. Okay.

12 All right. Go ahead and excuse the jury
13 at this time.

14 (Jury out at 12:00 o'clock p.m.)

15 **THE COURT:** Okay. Anything from either
16 side before we break for lunch?

17 If not --

18 **MR. BIGGERS:** Nothing from the government,
19 Your Honor.

20 **MS. JERMANN-ROBINSON:** No, Your Honor.

21 **THE COURT:** Okay. We will be in recess
22 until 1:15.

23 **THE CLERK:** Court stands in recess.

24 **THE COURT:** About how many more witnesses
25 do you all have?

1 I know at least three more.

2 **MR. BIGGERS:** Four.

3 **THE COURT:** Four more.

4 **MR. BIGGERS:** And, Your Honor, I should
5 tell counsel, I anticipate the next two will be
6 probably as quickly as the last witness. The one
7 after that will probably be the lengthy and the last
8 one is the interstate nexus.

9 **THE COURT:** All right. And, Ms. Robinson,
10 start thinking about defense and how many witnesses
11 you all are going to have.

12 **MS. JERMANN-ROBINSON:** Two.

13 **THE COURT:** Two witnesses.

14 Good, hoping to get all of the proof on
15 today.

16 (Lunch recess at 12:02 p.m.)

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